

Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

ATTORNEYS FOR APPELLEE:

JOHN PINNOW
Greenwood, Indiana

STEVE CARTER
Attorney General of Indiana

KARL M. SCHARNBERG
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

E.T.,)
)
Appellant-Defendant,)
)
vs.) No. 49A02-0801-JV-45
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE MARION COUNTY SUPERIOR COURT
The Honorable Marilyn Ann Moores, Judge
The Honorable Danielle Gregory, Magistrate
Cause No. 49D09-0612-JD-4966

July 30, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

E.T. appeals his true adjudication for Theft,¹ a class D felony if committed by an adult. E.T. challenges the sufficiency of the evidence as the sole issue on appeal.

We affirm.

The facts most favorable to the adjudication follow. On the evening of October 20, 2006, A.M. invited three girlfriends, M.M., J.H., and J.L., over to her house for a slumber party. The girls went to a movie theater with A.M.'s sister and then returned to A.M.'s house and changed into their pajamas. Shortly thereafter, J.H. received a phone call from an ex-boyfriend named Shawn who asked if he and his friends could stop by. J.H. consented, and around 9:00 p.m., Shawn arrived at A.M.'s house with his cousin (not identified), E.Y., and E.T.

After the boys arrived, A.M. went upstairs to her bedroom to play a video game. E.Y. joined A.M. in her room, sat on the edge of her bed, talked with A.M. as she played the game. Soon, Shawn, his cousin, and E.T. came upstairs and A.M. told them to go back downstairs. Shawn's cousin went downstairs, but E.Y. and E.T. went into A.M.'s brother's room. A.M. shooed them out of her brother's room and closed both the door to her brother's bedroom and her own bedroom. E.Y., followed by E.T., went into A.M.'s mother's bedroom and turned on the light. E.Y. then followed Shawn downstairs, leaving only E.T. and A.M. upstairs. E.T. remained in A.M.'s mother's bedroom and ignored A.M.'s repeated requests that he leave. Instead, E.T. walked over to a dresser on which A.M.'s mother kept her jewelry on some plates and in a jewelry box. A.M. eventually convinced E.T. to go downstairs to join the others.

¹ Ind. Code Ann. § 35-43-4-2 (West, PREMISE through 2007 1st Regular Sess.).

Shortly thereafter, J.H. and Shawn went back upstairs. A.M. followed and found them in the bathroom adjoining her mother's bedroom. E.T. also made his way back to A.M.'s mother's bedroom and began "messing with" A.M.'s mother's jewelry, taking particular interest in a pair of earrings which he held up to his ear as if trying them on. *Transcript* at 33. In response to A.M.'s request, E.T. put the earrings down. A.M., E.T., J.H., and Shawn went back downstairs and joined the others. Shawn went back upstairs to A.M.'s sister's room, turned on the light, and sat on the bed. A.M. followed him and told him that he needed to leave. As they were exiting the room, A.M. saw E.T. exiting her mother's bedroom. A.M. looked in her mother's room and saw nothing out of place.

About 9:45 p.m., A.M. announced that it was time for the boys to leave the house. Instead of leaving, however, the four boys went upstairs again. The four girls followed them up. Shawn and his cousin went into A.M.'s sister's room and J.H. and J.L. followed. E.T. went back into A.M.'s mother's bedroom and E.Y. was in the hallway when A.M. and M.M. reached the top of the stairs. A.M. went into the room and once again found E.T. at her mother's dresser. As she entered the room, E.T. turned away from the dresser and walked past her into the hallway. E.Y. suggested that it was time for them to leave and the four boys left the house. The four girls then retired for the evening.

Around 6:30 the following morning, A.M.'s mother returned home from work. As she prepared for bed, she observed some of her jewelry on the floor near her dresser. When she

awoke that afternoon, she asked A.M. if someone had been in her jewelry, and A.M. told her that she and her friends had played “dress up” the previous night.² *Id.* at 47.

On Monday morning, J.H. was in class with E.T. and noticed that he was wearing one of A.M.’s mother’s earrings that were missing. Later that day, M.M. saw E.T. in the hallway at school and noticed that he was wearing an earring that A.M.’s mother was missing. M.M. asked E.T. to give the earring back, and he told her that he would not give it back and that “if [she] kep[t] asking about it, . . . [she] wouldn’t see it again.” *Id.* at 150. The next day, J.H. noticed that E.T. was wearing both matching earrings. J.H. asked E.T. where he got the earrings, and he did not respond. After that day, E.T. stopped wearing the earrings to school. J.H. told A.M. that she had seen E.T. wearing earrings that looked like the ones A.M.’s mother was missing.

On January 2, 2007, the State filed a petition alleging E.T. was a delinquent child for having committed what would be class D felony theft if committed by an adult. At the conclusion of a November 27, 2007 denial hearing, the court adjudicated E.T. a juvenile delinquent and entered a true finding for theft. On December 18, 2007, the court held a dispositional hearing and ordered E.T. to complete six months of probation.

On appeal, E.T. argues that the evidence is insufficient to prove that he committed what would otherwise constitute class D felony theft if committed by an adult. Specifically, E.T. argues that his mere presence in the house does not prove that he “actually took” the earrings. *Appellant’s Brief* at 9. E.T. also points out that there were numerous people in and out of A.M.’s mother’s bedroom who could have taken the earrings.

² A.M. admitted that she lied to her mother.

Our standard of review with respect to juvenile adjudications is well settled.

We neither reweigh the evidence nor judge the credibility of witnesses. The State must prove beyond a reasonable doubt that the juvenile committed the charged offense. We examine only the evidence most favorable to the judgment along with all reasonable inferences to be drawn therefrom. We will affirm if there exists substantive evidence of probative value to establish every material element of the offense.

K.D. v. State, 754 N.E.2d 36, 38-39 (Ind. Ct. App. 2001) (citations omitted).

E.T.'s argument is simply a request for this court to reweigh the evidence, a task this court will not undertake on appeal. The evidence as recounted above clearly established more than E.T.'s mere presence in the home. Indeed, the evidence established that E.T. was in the bedroom, had possession of the earrings at one point that night, had the opportunity to take the earrings, and was seen wearing the earrings forty-eight hours after they were discovered missing. From these facts and the reasonable inferences to be drawn therefrom, the trial court reasonably concluded that E.T. took the earrings and thereby committed an act that would constitute theft, a class D felony, if committed by an adult.

Judgment affirmed.

KIRSCH, J., and BAILEY, J., concur